
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2023 - 2024 Regular

Bill No: AB 1734 **Hearing Date:** 7/10/2023
Author: Jones-Sawyer
Version: 4/20/2023
Urgency: No **Fiscal:** Yes
Consultant: Mehgie Tabar

SUBJECT: Local Government: Surplus Land Act: exemptions

DIGEST: This bill exempts certain housing and homelessness projects from the Surplus Land Act (SLA) in local agencies that have declared a local homelessness emergency and meet other requirements.

ANALYSIS:

Existing law:

- 1) Establishes procedures for the disposal of publicly-owned land that is surplus to the needs of local agencies, under the SLA, including to:
 - a) Require local officials that want to dispose of public property to declare that the land is no longer needed for the agency's use in a public meeting and declare the land either "surplus land" or "exempt surplus land."
 - b) Designate certain types of land as "exempt surplus land," which do not have to meet the requirements of the SLA.
 - c) Require local agencies to follow the procedures laid out in the SLA before surplus land can be sold, including, but not limited, to:
 - i) Send a written notice of availability to various public agencies and nonprofit groups, referred to as "housing sponsors," notifying them that land is available for the following purposes:
 - (1) Low- and moderate-income housing;
 - (2) Park and recreation, and open space;
 - (3) School facilities; or
 - (4) Infill opportunity zones or transit village plans.
 - ii) Negotiate in good faith for 90 days with housing sponsors that respond.

- d) Allows the local agency to dispose of the property on the private market if agreement is not reached with a housing sponsor.
 - e) Requires that, if a property sold as surplus is not sold to a housing sponsor, but housing is developed on it later, 15% of the units must be sold or rented at an affordable cost to lower income households.
 - f) Imposes specified penalties for violations of the SLA.
- 2) Defines “Low Barrier Navigation Center” to mean a Housing First, low-barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing.
 - 3) Defines “supportive housing” as housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community.
 - 4) Defines, federally, “transitional housing” to mean buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance.
 - 5) Requires cities and counties to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policy objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. Requires the housing element to contain an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs.
 - 6) Provides that each community’s fair share of housing be determined through the regional housing needs allocation (RHNA) process, which is composed of three main stages: (a) the Department of Finance and HCD develop regional housing needs estimates; (b) councils of government (COGs) allocate housing within each region based on these estimates (where a COG does not exist, HCD makes the determinations); and (c) cities and counties incorporate their allocations into their housing elements.

- 7) Establishes the pro-housing program at HCD, which create incentives for jurisdictions that are compliant with housing element requirements and have enacted pro-housing local policies.
- 8) Allows a local government to declare an emergency related to homelessness, where the local government, or officials designated thereby, may promulgate orders and regulations necessary to provide for the protection of life and property.

This bill:

- 1) Exempts, from the SLA, land disposed of for:
 - a) Emergency shelters that are low-barrier navigation centers;
 - b) Supportive housing;
 - c) Transitional housing; or
 - d) Affordable housing where 100% of the units are affordable to lower-income households, 20% of which can be for moderate-income households.
- 2) Authorizes a local agency to dispose of land pursuant to this bill, if it:
 - a) Has a compliant housing element;
 - b) Is designated prohousing; and
 - c) Declares a local homelessness emergency.
- 3) Requires a local agency that disposes of land pursuant to this bill to submit an annual report to HCD that includes:
 - a) Location of disposed land; and
 - b) Number of emergency shelter beds and housing units approved and produced on the land.
- 4) Authorizes HCD to request additional information on annual reports, as specified.
- 5) Sets civil penalties on a local agency if it disposes land in violation of this bill's requirements:
 - a) For the first violation, 30% of the greater of the final sale price or fair market value of the land at time of disposition; and
 - b) For any additional violations, 50% of the greater of the final sale price or fair market value of the land at time of disposition.

- 6) Requires that an independent appraisal of the land must determine the fair market value. Any of the following can bring an action to enforce these penalties:
 - a) Entities entitled to receive notices of availability under the SLA
 - b) A person who would have been eligible to apply for residence in affordable housing had the agency not violated the provisions of this bill
 - c) A housing organization
 - d) A beneficially interested person or entity
 - e) HCD
- 7) Mandates penalties to be deposited into a local housing trust fund, or certain state affordable housing funds, as specified.

COMMENTS:

- 1) *Author's statement.* "California has the largest population of people experiencing homelessness in the nation but builds only a fraction of the affordable housing needed. Though the Surplus Land Act was designed to promote an increase in the supply of affordable housing, existing exemptions for affordable housing projects often lead to a prolonged process and unfulfilled projects. AB 1734 will enable pro-housing government and transit agencies to dispose of publicly owned property for the development of shelters, transitional housing, supportive housing, or affordable housing."
- 2) *California's housing crisis.* California's housing crisis is a half century in the making. Decades of underproduction underscored by exclusionary policies have left housing supply far behind need and costs soaring. During the 1990's, California averaged only 110,000 new housing units per year. During the early 2000's, production increased significantly, reaching a peak of 212,000 units in 2004 before plummeting to historic lows during the recession. Unfortunately, the downward trend continues; the fact is that California has under-produced housing every single year since 1989.

A lack of affordable housing is the biggest contributor to homelessness. As housing costs continue to rise, rent becomes less affordable for lower-income households, who are forced to live beyond their means (paying more than 30% of income on housing costs) or are pushed out of their homes, leading to rapid increases in homelessness. Variation in rates of homelessness cannot be explained by variation in rates of individual factors such as poverty or mental illness, however, cities with higher rents and lower rental vacancy rates (i.e., tighter housing markets) are directly linked to higher per capita rates of

homelessness. Additionally, the data show that many people experiencing homelessness are employed; the problem is that their income alone often isn't enough to maintain stable housing. This can result in financial insecurity, which is both a main cause and a prolonging factor of homelessness.

According to the most recent point in time (PIT) count, 171,521 people were experiencing homelessness in California—representing 30% of the nation's homeless population. Two-thirds of the homeless population in California is unsheltered. Over half (51%) of all unsheltered people in the US were in California. California has the largest concentration of severely unaffordable housing markets in the nation and the statewide average home value reached a new record in June 2022 at \$793,300. Over three quarters (78%) of extremely low-income households in California are paying more than half of their income on housing costs compared to just 6% of moderate-income households.

According to the 2022 Statewide Housing Plan, published by HCD, California must plan for more than 2.5 million homes over the next eight-year cycle, and no less than one million of those homes must meet the needs of lower-income households.¹

- 3) *City of Los Angeles.* Los Angeles (LA) is California's largest city, with approximately 3.8 million residents. While LA represents less than 10% of the State's total population, it is home to almost 25% of the State's unsheltered population. According to the 2022 Greater Los Angeles Homeless Count, there are nearly 42,000 unhoused Californians in LA alone. Housing availability is a key contributing factor. In 2019, LA had a higher percentage of cost-burdened renter households than any other major American city, at nearly 60%. Over one-quarter of residents are severely cost-burdened, contributing to the homelessness emergency in LA.

A major cause of the housing crisis is the mismatch between the supply and demand of affordable housing. Through the RHNA process, the Southern California Association of Governments (SCAG) has determined that LA needs to plan for 184,721 homes by 2029 that are affordable to lower income households. However, if the production rates from the previous RHNA cycle continue, LA would create just 8% (14,200) of these units in the next eight years.

Since taking office in December 2022, LA Mayor Karen Bass has taken steps to address the housing and homelessness crises. The Mayor declared, and the city council ratified, a citywide state of emergency to address homelessness. Under

¹ 2022 Statewide Housing Plan: [A Home for Every Californian \(arcgis.com\)](https://arcgis.com)

the state of emergency, LA can take steps to lift rules and regulations that slow housing production, expedite housing contracts, and allow LA to acquire rooms, properties, and land to provide housing.

This bill would allow the Mayor to execute her directives—*i.e.*, allow local agencies that declare a local emergency related to homelessness, have a compliant housing element, and are designated pro-housing by HCD to exclude publically owned local land from the SLA that is disposed of for specified purposes.

- 4) *Public lands for affordable housing development.* One of the limiting factors in building new affordable homes is land—the high cost and acquisition of land suitable for housing. Public agencies own a significant amount of lands located in or near urban areas, some of which exceed those agencies’ foreseeable needs, which could be used for housing.

The SLA provides affordable housing developers notification when local agencies make land available for reasons other than the agency’s use, and requires local agencies to negotiate in good faith with them for these parcels. The goal is to help valuable public land develop into affordable housing, but this could be at the expense of a local agencies’ economic development opportunities.

This bill removes the applicability of the SLA in qualified jurisdictions for the production of specified residential uses—*i.e.*, Low Barrier Navigation Centers, supportive housing, transitional housing, and affordable housing. To qualify, the jurisdictions must have a declared local emergency related to homelessness, have a state-compliant housing element, and have been designated as a pro-housing jurisdiction by HCD. Currently, it is believed that the only jurisdiction to meet that requirement is the City of Los Angeles. However, that could change at any moment, as jurisdictions are actively being added to the list of pro-housing jurisdictions and/or declare states of emergency related to homelessness.

- 5) *Local surplus lands.* Public agencies are major landlords in some communities, owning significant pieces of real estate. When properties become surplus to their needs, public officials want to sell the land to recoup their investments. SLA spells out the steps local agencies must follow when they want to dispose of land. It requires local governments to give a “first right of refusal” to other governments and nonprofit housing developers, and to negotiate in good faith with them to try to come to agreement.

Before local officials can dispose of property, they must declare in a public meeting that the land is no longer needed for the agency's use and declare the land either "surplus land" or "exempt surplus land." Agency use includes land that is being used, or is planned to be used pursuant to a written plan the local agency's governing board adopts, or is disposed of to support agency work or operations, including, but is not limited to, utility sites, watershed property, land being used for conservation purposes, land for demonstration, exhibition, or education purposes related to greenhouse gas emissions, and buffer sites near sensitive governmental uses.

Agency use cannot include commercial or industrial uses or activities. However, if the local agency is a district, "agency use" can include commercial or industrial uses as specified if the agency's governing body takes action in a public meeting that the use of the site will directly further the express purpose of agency work or operations, or be expressly authorized by a statute provided that the district complies with specified affordable housing requirements.

- 6) *Exempt surplus lands.* The SLA designates certain types of land as "exempt surplus land," which does not have to meet the requirements of the SLA. All other surplus land must follow the procedures laid out in the SLA before a local agency can sell it. Exempt surplus land includes, but is not limited to, public land transfers for less than fair market value to provide affordable housing, land that a local agency is exchanging for another property necessary for the agency's use, and land that is a former street, right-of-way, or easement, and the local agency conveys to an owner of an adjacent property.

There is no exemption in the SLA for the disposal of land for the creation of housing types for people experiencing homelessness. As such, such projects need to go through the SLA's proscribed competitive bidding process. This process requires noticing the availability of the land to local public entities and any housing developers that have conveyed to HCD their interest in being noticed. The noticed entities have 60 days to respond to the notice, after which the local agency could enter into negotiations with an entity that meets the proposed specifications. This negotiation process can also take several months. This bill would enable qualified jurisdictions to bypass this process and directly dispose of land for the creation of housing types for people experiencing homelessness (*i.e.*, supportive housing, shelters, Low Barrier Navigation Centers).

- 7) *Removing outdated references.* This bill exempts certain housing and homelessness projects from the SLA, including "transitional housing" which is generally a housing type/term no longer funded by federal and state programs.

The committee may wish to consider narrowing the focus of the exemption for transitional housing to projects serving transition-aged youth, or instead include an exemption for low barrier navigation centers, or both.

- 8) *Competing Measures.* Several authors introduced measures that seek to amend the SLA this year. ***The author and sponsors of this bill may wish to coordinate their efforts with other measures amending the SLA to avoid conflict and duplication.***
- 9) *Double-referral.* This bill was first referred to the Senate Governance and Finance Committee, where it passed on an 8-0 vote on July 5.

RELATED LEGISLATION:

SB 747 (Caballero, 2023) — amends the SLA to increase the ability for local agencies to dispose of the land for economic development opportunities. *This bill is currently in the Assembly Housing and Community Development Committee.*

AB 480 (Ting, 2023) — amends the noticing provisions that apply to “surplus land” and “exempt surplus land” disposed of by local agencies subject to the SLA, among other provisions. *This bill is being heard at this same committee hearing.*

AB 1607 (Wendy Carrillo, 2023) — declares that the SLA does not apply to the transfer of land within Los Angeles County to the Los Angeles County Affordable Housing Solutions Agency, and from within the San Francisco Bay Area to the Bay Area Housing Finance Authority. *This bill is currently in the Senate Governance and Finance Committee.*

SB 1373 (Kamlager, Chapter 724, Statutes of 2022) — extended the authority for the City of Los Angeles to complete disposition of certain surplus property in accordance with the SLA as it read on December 31, 2019.

AB 2319 (Bonta, Chapter 963, Statutes of 2022) — created an exemption from the SLA for the Alameda Naval Air Station (Alameda Point).

AB 1486 (Ting, Chapter 664, Statutes of 2019) — expanded the scope of local agencies subject to the SLA, revised the definitions of “surplus land” and “exempt surplus land,” revised the noticing requirements relative to local agencies, housing sponsors and HCD, and added penalties for local agencies that sell land in violation of the SLA.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

POSITIONS: (Communicated to the committee before noon on Wednesday,

July 5, 2023.)

SUPPORT:

Mayor Karen Bass, City of Los Angeles (Sponsor)
Central City Association
City of Long Beach
Downtown Women's Center
John Burton Advocates for Youth
LA Family Housing
Los Angeles Unified School District
Safe Place for Youth
The People Concern
The United Way of Greater Los Angeles

OPPOSITION:

None received.

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